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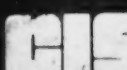

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101ST CONGRESS *2d Session*	SENATE	REPORT 101-439

TELEPHONE OPERATOR CONSUMER SERVICES IMPROVEMENT ACT OF 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1660

AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

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[To accompany S. 1660]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1660) relating to telephone operator consumer services, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE OF BILL

The purpose of the bill is to protect consumers who make interstate operator services calls from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices.

BACKGROUND AND NEEDS

Recent developments in the operator services industry

Until recently, AT&T was the only provider of operator services.[1] Over the past five years, however, several new long distance companies have sprung up to compete with AT&T in the market for operator services provided from telephones made available to the general public.[2] These new companies (known informally as "alternate operator services" companies or "AOS" companies)[3] agree to pay hotels, hospitals, universities, and pay phone owners (typically known as "aggregators") a percentage of their revenues[4] if the aggregator agrees to route all of the operator services traffic from its telephones to the AOS carrier.[5] As a result, when a caller from one of these phones dials "O" plus a telephone number, that call is routed automatically to the AOS company chosen by the aggregator. The call is routed to this carrier even when the caller uses a calling card issued by another company. In other words, the owner of the telephone chooses the designated operator services company, not the person placing the telephone call.

Furthermore, the aggregator often "blocks" callers from reaching the caller's desired carrier by programming the telephone so that it does not recognize the carrier-specific access codes.[6] Such blocking has the effect of turning users of these telephones into "captive" customers. Some AOS carriers take advantage of the customer's captive status by engaging in deceptive and unreasonable practices. In particular, some AOS carriers fail to identify themselves and charge rates that are several times higher than the rates that the consumer expects. Callers on these telephones have no choice but to use the operator services presubscribed to that telephone or not to use the telephone at all. An alternative telephone is not always available, and even if another telephone is

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[1] "Operator services" include collect or person-to-person calls, calls billed to a third number, or calls billed to a calling card or credit card. Over 50 percent of operator-assisted calls are now billed to a caller card or credit card, and this percentage is growing. Operator services include services provided by an automated device as well as those provided by a "live" operator.

[2] Telephones made available to the general public include telephones in hotels, hospitals, universities, airports, and other pay telephones. This bill does not involve operator-assisted calls that are made from one's home.

[3] These AOS companies include those companies that own their own transmission facilities, such as MCI and Sprint, as well as those that resell transmission capacity owned by other carriers, such as International Telecharge Inc. (ITI), National Telephone Service (NTS), Telesphere, and about 115 other smaller companies. Even though AT&T is not typically regarded as an "AOS" company, the provisions of the reported bill would apply to all operator services companies, including AT&T. For purposes of this report, the term oeprator services provider, or OSP, will be used to refer to all such providers, including AT&T.

[4] These "commissions" often range from 15 to 25 percent of the AOS carrier's revenue per call.

[5] "0+" calls refers to those calls that consumers make by dialing "0" plus a telephone number. "0-" calls are those that a consumer makes by dialing only "0". "0-" calls are routed to the local telephone company operator and are not subject to this legislation.

[6] These carrier-specific access codes include "800" numbers, "950" numbers, and "10XXX" numbers. These access codes allow callers to reach their long distance company of choice by dialing "950-10XX", "1-800-XXX-XXXX", or "10XXX". The numbers that replace the "Xs" will identify the specific carrier. For instance, AT&T's access number is 10288, MCI's is 10222, and Sprint's is 10333. If a caller dials one of these carrier-specific access code numbers (and the access code is not blocked), the caller will be routed automatically to the carrier associated with that access code number.

nearby, there is a good chance that that telephone is also presubscribed to the same or a similar AOS carrier.[7]

Consumer complaints and the TRAC order

Over the past three years, consumers have filed thousands of complaints with the Federal Communications Commission (FCC or Commission) and State commissions, and have contacted Congress and State legislatures concerning the practices of these new AOS companies. The FCC alone has received over 4000 complaints. Consumers have complained most often that:

1. AOS companies do not identify themselves to the caller before they connect the call;[8]

2. the prices that AOS companies charge for these calls are several times higher than the prices charged by AT&T;

3. callers are billed for calls that are never answered; and

4. callers cannot reach the carrier they want because the carrier-specific access code is blocked.[9]

In 1988, the Telecommunications and Research Action Center (TRAC) and Consumer Action, two consumer groups, filed a formal complaint with the FCC against five AOS companies. The complaint alleged that the rates charged by these companies were unjust and unreasonable in violation of the Communications Act of 1934 and urged the FCC either to order them to cease and desist from offering service or to regulate their rates.

The AOS companies vigorously opposed this complaint and denied any wrongdoing. They argued that there was no reason for the FCC to regulate their rates when the FCC had declined to regulate the rates of MCI and Sprint when they first began to provide "1+" competition to AT&T. The AOS carriers argued that their rates need not be regulated because they do not have a dominant position in the operator services market. They claimed that their rates must be somewhat higher than than AT&T's because their costs are higher; that, in any case, their rates are not unreasonable; that they provide new services that AT&T never provided (such as multilingual operators, call storage, and enhanced emergency services); and that many of the consumer complaints were caused by temporary billing difficulties that are common when new competitors first enter the market.

In ruling on the TRAC and Consumer Action complaint, the FCC noted that, under its rules, the AOS carriers are considered "non-dominant" carriers, and their rates are presumed to be reasonable unless proven otherwise.[10] The FCC ruled that the complainants

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[7] For instance, the pay telephones located in the lobbies of hotels are often presubscribed to the same carrier that provides operator services to the telephones in the hotel rooms. A municipal authority often will sign a single contract for the provision of operator services from all the telephones in an airport or for the entire city.

[8] The failure of operator services carriers to identify themselves is especially troublesome because these carriers sometimes accept calls when the consumer uses a calling card issued by a different carrier.

[9] *See*, "Second Report on Alternative Operator Services (AOS)", prepared by the NARUC AOS Task Force, February 27, 1989 (NARUC Second Report).

[10] Section 201(b) of the Communications Act of 1934 requires that all carriers' charges must be "just and reasonable" (47 U.S.C. 201(b)). The FCC has chosen to "forbear" from regulating the rates of "non-dominant" carriers because they do not possess market power and thus have little ability to charge unjust or unreasonable rates in violation of the Communications Act of

Continued

had not carried their burden of proving that these carriers' rates were unreasonable. The FCC thus declined to order them to cease and desist offering service and took no action to regulate their rates. Instead, the FCC ordered the five AOS companies to provide greater information disclosure to the customer and to prevent blocking of access to ther carriers.[11] Although representatives of the FCC subsequently testified that the provisions of this decision apply broadly to the entire operator services industry, the FCC did not adopt rules to implement this decision.[12] The FCC also failed to make clear whether and to what extent blocking by aggregators was unlawful.

Impact of the TRAC order

Since this decision, the number of consumer complaints about operator services has remained high. A representative of the FCC testified before the Communications Subcommittee on February 7, 1990, that the FCC continues to receive 125 to 150 complaints every month concerning operator services, more than it receives on any other matter. Indeed, the FCC representative testified that the FCC's actions have not been sufficient to date to protect the interests of the consumer regarding operator services.

Meanwhile, several States have adopted regulations to protect intrastate callers against the practices of these AOS companies. Some States have refused to permit AOS firms to operate in their States, and others have imposed strict rate regulation.[13] The States have supported Federal legislation because they do not have jurisdiction over interstate calls, which represent the majority of operator services calls.

Other FCC proceedings

The emergence of competitors in the operator services marketplace has raised a number of industry issues that the FCC has been unable to resolve. There are currently several proceedings and petitions that have been pending at the FCC for some time. For instance, the Public Telephone Council filed a petition two years ago requesting the FCC to initiate a proceeding to examine whether local exchange carrier pay telephones should be "unbundled" and "separated" from the telephone companies' monopoly services. A petition for declaratory ruling was filed in April 1989 concerning end user common line access charges assessed against private pay phone owners by the local telephone companies. Bell Atlantic, one of the Bell Operating Companies (BOCs), filed a petition with the FCC on April 14, 1989, asking for the FCC to set rules to treat all pay telephones (telephone company-owned pay phones and competi-

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1938. *See, Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization: First Report and Order*, 85 FCC 2d 1 (1980); *Second Report and Order*, 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 59 (1983); *Fourth Report and Order*, 95 FCC 2d 554 (1983); *Fifth Report and Order*, 98 FCC 2d 1191 (1984); *Sixth Report and Order*, 99 FCC 2d 1020, *vacated and remanded sub nom., MCI* v. *FCC*, 765 F.2d 1186 (D.C. Cir. 1985).

[11] The FCC permitted these companies to file for waivers of the unblocking requirement if their technology could not accommodate other carriers, and several of them have done so. The FCC has not ruled on these waiver requests.

[12] *See, Memorandum Opinion and Order, Telecommunications Research and Action Center and Consumer Action* v. *Central Corporation*, File Nos. E-88-104 through E-88-108, February 27, 1989, DA 89-237 (*TRAC Order*).

[13] NARUC Second Report.

tive pay phones) equally. An operator services company, Capital Network System, Inc., and a trade association representing long distance telephone carriers, COMPTEL, filed a petition over a year ago requesting the FCC to mandate the availability of billing and collection services and access to validation data on a just and reasonable and non-discriminatory basis from all local telephone companies.

Without taking a position on the merits of these matters, the Committee believes that the FCC should address these petitions promptly. The FCC needs to examine these issues so that it can set ground rules to ensure that fair and effective competition in this market is allowed to develop in a manner that will benefit consumers. The Commitee believes that the FCC's first priority should be to take action to implement the provisions of this bill. Nevertheless, the FCC should make every effort to address the issues raised by those filings as soon as possible.

Summary and conclusion

Over the past few years, several new companies have begun providing operator services from pay telephones, hotels, universities, and other public locations. Consumers have complained frequently that these companies charge unreasonably high rates, fail to identify themselves, charge for uncompleted calls, and block access to other operator services carriers. The actions taken by the FCC in ruling on the formal complaint filed by TRAC and Consumer Action moved in the right direction but were not comprehensive enough to resolve these problems.

The reported bill addresses these concerns by requiring each operator services provider (OSP) to identify itself to the consumer and to quote its rates on request, and by requiring aggregators to unblock access to other carriers. These measures should permit competitive forces to operate, forcing rates down and increasing the accountability of operator services companies to the consumer. If, after two years, the FCC finds that consumers are not benefiting from competition in the operator services market, the bill grants the FCC the authority to regulate the rates of these companies.

This legislation will ensure that each consumer is given the information and opportunity to make an informed choice of the desired operator services carrier. Only when callers are capable of making informed choices will true competition arise in this industry. The bill will help to protect consumers from the problems caused by the entrance of these new carriers while avoiding overly stringent regulation that could harm the development of a competitive operator services market.

LEGISLATIVE HISTORY

Senator Dixon introduced S. 1643 on September 19, 1989. The bill is currently co-sponsored by Senators Levin, Dodd, Grassley, Sanford, and Boschwitz. On September 22, 1989, Senator Breaux introduced S. 1660 with six co-sponsors—Senators Kohl, Gore, Pressler, Simon, Kerry, and Burns. On September 25, 1989, the House of Representatives passed an amended version of H.R. 971, introduced by Congressman Cooper. H.R. 971, as passed by the House, is iden-

tical to S. 1660 as introduced. All three bills were referred to the Committee.

The Communications Subcommittee held a hearing on S. 1643 and S. 1660 on February 7, 1990. Witnesses included the Chief of the Common Carrier Bureau of the FCC, a representative of the National Association of State Regulatory Utility Commissioners, and several industry and consumer representatives. On June 27, 1990, in open executive session, the Committee ordered S.1660 reported without objection by voice vote, with an amendment in the nature of a substitute offered by Senator Inouye.

SUMMARY OF MAJOR PROVISIONS

The substitute bill requires all OSPs, within 30 days after the enactment of the bill, to:

(1) identify themselves and provide their rates to the consumer on request;

(2) refrain from billing for uncompleted calls in most locations;

(3) withhold payment of commissions to those aggregators that block consumers from reaching their desired operator services carrier; and

(4) file informational tariffs with the FCC.

Aggregators must:

(1) post information on or near the telephone which identifies the OSP serving that telephone, informs the consumer of the right to obtain access to another carrier, and includes the telephone number of the consumer affairs division of the FCC; and

(2) permit customers to use the "950" and "800" numbers and charge no more for calls made using any access code than aggregators charge for "O+" calls.

The FCC must:

(1) within 30 days of enactment initiate a proceeding to implement the bill to be completed within six months;

(2) consider the need to prescribe compensation for owners of competitive public pay telephones for calls made using an access code;

(3) initiate a proceeding to monitor operator services rates, costs, and practices and report to Congress on its findings within 5 months, 11 months, and 23 months after the enactment of the bill—if the FCC finds that consumers are not benefiting from competition in the operator services market, the FCC may impose rate ceilings on the rates charged by these carriers; and

(4) decide, within nine months after enactment, whether all carriers must provide an "800" or "950" number for operator services or whether all aggregators must unblock the "10XXX" access code, or both.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget

Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 3, 1990.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1660, the Telephone Operator Consumer Services Improvement Act of 1990, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 27, 1990. CBO estimates that the bill would result in additional costs to the federal government of about $4 million annually in fiscal years 1991 through 1995, assuming appropriation of the necessary amounts. The penalities established by the bill could increase receipts to the federal government. We have no basis, however, for predicting the amount of any such receipts. This bill would result in no additional costs to state or local governments.

S. 1660 would require the Federal Communications Commission (FCC) to undertake a number of activities concerning providers of telephone operator services and aggregators that maintain public telephones through which consumers who make interstate calls use the providers. The bill would impose new service, disclosure, and billing requirements on operator services providers and aggregators. S. 1660 would require the FCC to conduct a rulemaking to prescribe regulations to implement these requirements. The FCC also would be required to determine whether the bill's regulatory objectives were being met and to report periodically on the Commission's activities. Depending on the findings of the FCC's final report in 1992, the FCC would be authorized to set ceilings on the rates charged by provides of operator services.

Under S. 1660, the FCC would be charged with requiring all providers of operator services to file information about rates and fees charged for calls. The FCC could waive this requirement after three years. Finally, the bill would mandate that aggregators post the address and phone number of the FCC's consumer affairs division on or near telephones in order for consumers to submit complaints about operator services providers.

Based on information from the FCC, CBO estimates that writing and enforcing the regulations, determining whether the regulations are effective, and reporting on its activities would cost the FCC about $1.3 million in both fiscal years 1991 and 1992. In subsequent years, ongoing costs for these activities would be about $900,000 annually. If the FCC determined that rate ceilings were necessary, it would incur annual costs of about $700,000 beginning in 1993 to conduct annual rate review proceedings. CBO also estimates that it would cost the FCC $750,000 to $900,000 each year from 1991 to 1995 to review information filed by the operator services providers and to enforce the filing requirement. In addition, we estimate that the costs to process the complaints generated by posting the FCC's address and telephone number on all public telephones would be about $1.6 million each year.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Laura Carter, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

Number of persons covered

This legislation affects the operations of approximately 120 carriers that provide interstate operator services. These carriers employ several thousand operators. Many of these "live" operators are being replaced with automated recordings, especially as the use of "push-button" telephones become more common. The Committee anticipates that the actual number of persons employed as telephone operators will decline over time. The provisions of this bill do not apply to operators employed by local telephone companies or to purely intrastate carriers because the regulations only will govern the activities of interstate operator services.

The legislation also requires aggregators to post information on their telephones and unblock certain access codes. The burden on individuals employed by these aggregators is expected to be minimal. Posting stickers on pay telephones likely will be a one-time activity that should require only periodic maintenance. Providing "tent cards" for telephones at hotels, hospitals, and other aggregator sites is also likely to impose a minimal burden on staff at these locations. Unblocking the access codes is a one-time technical alteration that will require a minimal amount of continued activity.

Despite the number of persons affected by this legislation, the regulations it requires are necessary to ensure that consumers are given the information and the opportunity to protect themselves from unreasonably high rates and deceptive practices when using an OSP.

Economic impact

The requirements on OSPs and aggregators are likely to impose a slight economic burden on these firms. The carrier identification provisions may increase the amount of time that each operator spends on each call. The AOS firms may see a decrease in revenue as a result of increased consumer education and because of the ban on billing for uncompleted calls. According to the operator services companies, these requirements are not the type of burden that will affect significantly their profitability and are not strenuously opposed. Aggregators also may be required to expend some funds to unblock access codes and to provide the necessary information to the customer, but these are largely one-time costs. These economic burdens are the minimum necessary to ensure that consumers have the information and the ability to make choices regarding their operator services. Further, these measures should provide an

economic benefit to consumers of telephone operator services. To the extent that these measures provide the ground rules for a more competitive market, they will give the carriers greater incentives to operate efficiently and productively, which should benefit the U.S. economy as a whole.

Privacy

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

Paperwork

This legislation requires all operator services companies to file "informational tariffs" with the FCC. The informational tariffs are necessary to allow the FCC to monitor the rates of OSPs and to determine whether competition in this market is benefiting the consumer. While this will increase the paperwork burdens faced by these companies and the FCC, these informational tariffs are not expected to contain the same detailed cost justification material that typically accompanies the tariffs filed by dominant carriers. The FCC has the authority to waive the filing of these informational tariffs after three years if it determines that competition in this market has benefited consumers.

SECTION-BY-SECTION ANALYSIS

Section 1.—Short Title

Section 1 states that the bill may be cited as the "Telephone Operator Consumer Services Improvement Act of 1990."

Section 2.—Findings

Section 2 sets forth the following findings of Congress:

1. the divestiture of AT&T and various decisions allowing open entry for competitors have permitted many new firms to enter the telecommunications market;

2. the growth of competition in the telecommunications market requires safeguards that are fair to consumers and the industry;

3. a variety of companies now compete for contracts to provide operator services from pay telephones, hotels, hosptials, airports, and other locations where telephones are made available to the public;

4. the existence of a variety of OSPs is insufficient to make that market competitive unless consumers can make informed choices from among those providers;

5. consumers often cannot make informed choices among OSPs because their attempts to reach their desired OSPs through telephone billing cards, credit cards, or access codes are blocked;

6. several State regulatory authorities have taken action to protect consumers when making intrastate operator services calls;

7. in two years, the FCC received over 4,000 complaints from consumers about operator services;

8. consumers complain that they are denied access to the carrier of their choice, they are deceived about the identity of the carrier providing their operator services and about the rates for the call, they lack information on how they can complain, and they are being deprived of their free choice;

9. the FCC has testified that its actions have been insufficient to correct the problems in the operator services industry to date; and

10. a combination of industry self-regulation and government regulation is required to ensure that competitive operator services are provided in a fair and reasonable manner.

Section 3.—Definitions

Section 3 sets forth several definitions. Some of the most important are the following.

Under paragraph (1), an "aggregator" is an entity that in the ordinary course of its operations makes a telephone available to the public or to transient users for the placing of interstate, operator-assisted telephone calls. Aggregators include hotels and motels, hospitals, universities, airports, gas stations, pay telephone owners, and others. Aggregators only include persons who make telephones available for interstate calls; thus providrs of so-called "local-only" telephones, which are not made available for interstate calls, do not fall within the scope of this legislation.

The definition of aggregator includes only a person that makes telephones available "in the ordinary course of its operations". This definition is not intended to include establishments such as law firms or corporations that make a telephone available in a lobby or other public place solely for the convenience of their customers. These entities typically receive no commissions or other compensation for making the telephone available. Thus, there is less need to protect a user of such a telephone by requiring the entity to unblock other access codes and otherwise comply with the provisions of this bill. The definition is intended to include all pay telephones even if no compensation is paid to the owner of the phones.

Under paragraph (2), "call splashing" refers to the transfer of a telephone call from one OSP to another so that the subsequent provider is unable to determine the actual originating location of the call and is thus unable to bill the call on the basis fo the originating location. This provision is intended to include cases where the subsequent provider is able to determine the actual originating location but, for whatever reason, does not bill the customer based upon the actual originating location. In other words, the definition is intended to include any case in which an OSP issues a bill that does not reflect the actual originating location of the call.

An example of "call splashing" is as follows. Suppose that a consumer in a hotel in Washington, DC, wishes to place an operator-assisted call using an AT&T calling card to Baltimore, MD. The presubscribed OSP for that hotel, however, may be based in Chicago. If the OSP is unable to accept the AT&T calling card, the caller may ask the OSP to transfer the call to an AT&T operator. The AT&T operator, however, is often unaware that the call originated in Washington and will believe that the call originated in Chicago.

The AT&T operator therefore will bill the customer for a call from Chicago to Baltimore, rather than from Washington, DC, to Baltimore.

It should be noted that "call splashing" does not occur every time a call is transferred. If the transfer of the call occurs so that the second operator is able to bill based upon the actual originating location, no "call splashing" occurs. For instance, if the AT&T operator in the above example is able to determine that the call originated in Washington, DC, and can bill for the call appropriately, no "call splashing" occurs.

Under paragraph (6), "equal access code" means a carrier-specific number that allows the public to establish an equal access connection with an OSP. Such "equal access codes" include the 10XXX access code and any future versions of this code (such as 10XXX) that may be established as a part of the North American Numbering Plan for the provision of equal access from aggregator locations.

Under paragraph (7), "operator services" include interstate telecommunications services that involve any assistance to a consumer to arrange for billing other than to the number from which the call was placed. This definition includes assistance provided either by a "live" person or by automation, such as voice recordings or "bong-in-a-box" services. Carriers may not escape this definition by employing a particular technology that does not involve a "live" operator. The provisions of this bill do not apply to operator services calls placed through a carrier-specific access code (such as a 950, 800, or 10XXX number) to a carrier with which the consumer has previously established an account. If a consumer dials an access code number, the consumer presumably knows the identity of the provider and is comfortable with the service and rates provided by that carrier. (In other words, the consumer already has made an informed choice of that carrier.)

In addition, this definition is not intended to apply to telephone calls made from a residence or from telephones that are not made available to the public or to transient users. This definition applies only to calls from telephones made available to the public from aggregator locations. Finally, this definition only applies to interstate, interexchange carriers.

Under paragraph (9), "presubscribed provider of operator services" refers to the OSP to which the customer is routed when the customer dials "0" plus the telephone number. For purposes of this bill, the presubscribed provider of operator services does not include the carrier to whom the customer is routed when the customer dials "0" alone (these calls are routed to the local telephone company) and does not include the international provider of operator services to which the customer is connected when the customer dials "011".

Section 4.—Rulemaking required

Section 4 requires the FCC to conduct a rulemaking to protect consumers from unfair and deceptive practices regarding operator services calls and to make sure that consumers have the opportunity to make informed choices in making such calls. The FCC must initiate this proceeding within 30 days after enactment of this bill

and must complete the proceeding within 180 days after enactment. The regulations it adopts must take effect no later than 90 days after the date the regulations are prescribed. These time deadlines are identical to those of S. 1660 as introduced, except that S. 1660 as introduced gave the FCC 120 days to complete the proceeding.

The FCC must issue rules that establish standards for the routing and handling of emergency telephone calls and establish a policy to ensure that operator services companies make public any information about recent changes in the operator services market.

The provisions of this bill set forth certain minimum requirements that the Committee finds are necessary at this time to protect the interests of the consumer. The FCC must adopt rules to enforce these provisions. The FCC should examine the operator services market closely and monitor the consumer complaints it receives. The FCC should develop additional regulations concerning the operator services industry that are consistent with these provisions if it finds that such additional regulations are necessary to carry out the purposes of this bill.

Section 5.—Minimum requirements

Subsection (a)(1) imposes several requirements on each OSP. OSPs must comply with these requirements within 30 days of the enactment of the bill and may not await the completion of the rulemaking proceeding initiated pursuant to section 4.

Subparagraph (A) requires each OSP to identify itself to the consumer at the beginning of each call and before the consumer incurs a charge for that call. The purpose of this provision is to ensure that consumers are informed of the identity of the carrier handling their call. This provision responds to the substantial number of consumer complaints alleging that the caller was unaware that a carrier other than their desired carrier was handling their call until the caller received a bill for the call. This situation is especially troubling when a customer bills the call to a calling card issued by his or her desired carrier. By identifying itself at the beginning of the call, the carrier ensures that the consumer has the opportunity to hang up or request a transfer of the call before the call is put through and before the customer incurs a charge for the call.

Subparagraph (B) provides that an OSP must permit the caller to terminate the call at no charge before the call is answered. S. 1660 as introduced would have required that carriers permit the consumer to terminate a telephone call at no charge. This could have been read to permit callers to terminate the call at no charge even after the caller had completed a conversation with the called party. The provision in the bill as reported is intended to require the carrier to permit the customer to hang up at no charge before the carrier routes the call to the desired location. This provision is not intended to supplant the requirement of subsection (a)(1)(F) regarding billing for unanswered calls. The Committee recognizes that carriers, in non-equal access areas, may unknowingly bill for calls that the caller terminates before the call is answered.

Subparagraph (C) requires an OSP to disclose immediately to the consumer, upon request, the rates or charges for the call, the meth-

ods by which the rates or charges will be collected, and the provider's method for processing complaints. This provision is identical to the provision in S. 1660 as introduced and is intended to ensure that consumers have access to the rate information they need to decide whether to allow the presubscribed carrier to carry these calls.

Subparagraph (D) requires an OSP to ensure that all aggregators with which it does business (1) post information concerning the provider's practices on or near each telephone, and (2) unblock access to the "950", "800", and, if required by the FCC, the equal access codes ("10XXX"). The concept behind this provision was originally contained in S. 1643. The Committee believes that this provision will give aggregators an additional financial incentive to unblock access to other carriers. The term "compensation" refers to any type of compensation which is paid by any means or device, including, but not limited to, indirect compensation, discounts, and payments by means other than cash.

The compensation that aggregators receive from operator services carriers can be a significant source of funding for many aggregators, especially private pay phone owners. By prohibiting the operator services carriers from paying the compensation (rather than prohibiting the aggregators from receiving compensation), the bill places the burden on the operator services company, thereby subjecting the carriers to the possibility of penalties under the Communications Act of 1934 if they continue to pay such compensation. This provision is intended to give operator services carriers an additional incentive to ensure that their aggregators unblock access, as required by the subparagraph (D).

The bill prohibits the payment of compensation "at locations" at which blocking occurs. A location can include more than one telephone. In other words, if one phone in a location is blocked, the OSP must withhold payment of compensation for all the traffic delivered from all the other telephones at that location. On the other hand, an aggregator who is "blocking" at one location and is therefore barred from collecting compensation at that location nonetheless may collect compensation for calls placed at another location where no blocking is occurring. The FCC should adopt rules to define "location" in a way that recognizes the need to give aggregators the incentive to unblock all the telephones they make available to the public while ensuring that commissions are not withheld unfairly. The Committee intends that each hotel, motel, or similar building should be considred a separate location.

Subparagraph (F) provides that an OSP must not bill callers for unanswered telephone calls in equal access areas, and must not knowlingly bill for unanswered telephone calls in non-equal access areas. Billing for unanswered telephone calls results from the lack of "answer supervision" capability in some local telephone company exchange offices. "Answer supervision" enables a carrier to ascertain the precise time between call placement and connection as well as to distinguish between answered and unanswered calls. The availability of "answer supervision" is tied closely to the availability of "equal access' from the local telelphone company. "Equal access" is now available from approximately 93 percent of the access lines in the country.

In ruling on a set of formal complaints filed against certain long distance companies in 1984, the FCC declined to prohibit carriers from billing for unanswered calls. The FCC also declined to order that equal access be implemented more quickly.[14] Instead, the FCC relied upon the carriers' commitments to issue refunds to customers who complained to the carriers or to the FCC about bills they received for unanswered calls. The FCC asserted that the widespread publicity about such overcharges alerted the public that they should examine their telephone bills, and that this situation, coupled with the refund practices of interexchange carriers, had abated the issue. The FCC submitted a letter to the House Subcommittee on Telecommunications and Finance last year indicating that the policies set forth in this decision in 1984 continued to reflect the FCC's policy.

The FCC's reliance upon the industry and consumer complaints to solve this problem is untenable. The large number of consumer complaints concerning billing for uncompleted calls demonstrates that the industry has taken advantage of the lack of FCC action and has continued to issue bills for unanswered calls even where equal access is available. The Committee believes that the burden of ensuring accurate billing should rest with the carrier in the first instance, not with the consumer. The FCC's complaint process is proper fall-back mechanism for isolated problems but should not be relied upon as the primary mechanism for protecting the consumer from a general industry practice. For this reason, the bill prohibits all billing for unanswered calls in equal access areas.

S. 1660 as introduced prohibits operator services carriers from "knowingly charging" for uncompleted telephone calls. The Committee believes that this provision provides the operator services companies with too much freedom to avoid the intention of the provision. It is difficult to prove, for instance, that a carrier "knew" that it was charging for an uncompleted call. Carriers typically subscribe to an access line that carries hundreds of calls. If the carrier subscribes to a form of access that does not include "answer supervision", there is no way for the carrier to "know" whether any of those calls was answered. Thus the carrier could continue billing for all calls carried over that access line whether they were completed or not and use the defense that it did not "know" that that particular call was not completed.

Where equal access is available, however, there is no reason why a carrier cannot subscribe to a form of access that provides "answer supervision" capability. For these reasons, the bill, as reported, prohibits carriers from billing for unanswered calls in equal access areas. At the same time, the provision protects the carriers where equal access is not available by specifying that they may not "knowingly" bill for unanswered calls. This allows the OPSs in these areas to make a reasonable estimate of whether a call is answered or not.

Further, by specifying that the carriers cannot "bill" for unanswered calls, rather than "charge" for unanswered calls, the burden is placed on the carriers to issue correct bills in the first

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[14] *Bill Correctors Ltd.* v. *United States Transmission Systems, Inc.*, Mimeo No. 703 (released Nov. 8, 1984) (*Bill Correctors*).

instance, rather than relying upon subsequent action by the consumer.

Subparagraph (G) provides that a OSP must not engage in call splashing, unless the caller specifically consents. As defined earlier in the bill, call splashing involves the transfer of a call from one operator services carrier to another, resulting in the caller being billed for a call from a location different from the caller's actual originating location. S. 1660 as introduced would have "prevented" call splashing after considering the advice of the carrier liaison committee convened by the FCC. After the introduction of this bill, the carrier liaison committee, which operates on the basis of a consensus, reported that it had been unable to come to an agreement on how to resolve this problem. S. 1643 would have banned all call splashing.

The Committee beleives that the carrier identification and unblocking requirements contained in the bill as reported should resolve most of the problems with call splashing. As long as an aggregator has properly unblocked the telephone that the caller is using, there should be no need for the OSP to "splash" the call to the caller's desired carrier. The caller may simply hang up and dial the desired carrier's access code nubmer.[15]

The Committee recognizes, however, that some customers may not wish to hang up and dial a new number and would prefer that the carrier transfer the call to the desired carrier even if the call is splashed. For instance, some callers may find it difficult to dial a new set of numbers. Others may prefer the convenience of dialing one digit and be willing to pay a higher rate for that convenience. Still others may be calling from a telephone that, despite the propvisons of this bill, does not permit the use of other access code numbers. To account for these possibilities, the bill permits call splashing in those limited cases where the consumer specifically requests to be transferred, the consumer is fully informed that the call may result in a bill reflecting a different originating location, and the consumer explicitly consents to having the call splashed.

Subparagraph (H) provides that an OSP may not bill a call to a billing card number issued by another carrier, unless: (1) the call is billed at a rate not greater than the issuing carrier's rate for the call; (2) the caller requests a service that the issuing carrier does not provide; or (3) the caller specifically consents to be charged at a higher rate. This subsection addresses the problem that results when an OSP connects a call and bills the customer even though the customer uses a calling card issued by another carrier. The bill does not attempt to protect customers completely from this problem because this issue is currently under review by the FCC and by the courts. Nevertheless, the bill does address one aspect of this problem which may become more important in the future.

This problem has developed since the diverstiture of AT&T, which resulted in the BOCs administering a database billing card

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[15] There still may remain a problem for customers who seek to be transferred to AT&T, however, because AT&T has not provided an "800" or "950" access number for its customers and because many aggregator phones cannot recognize the "10XXX" access code that AT&T has established. For this reason, section 5(g) of the bill requires the FCC to require within 9 months that all carriers establish an "800" or "950" number, or that aggregators must unblock the "10XXX" access code, or both.

numbers. The BOCs issue calling cards to their telephone customers using numbers from this database. All OSPs are permitted to accept these calling card numbers, verify that the number is accurate and that the customer holds a valid account, and issue a bill to the customer's address based on that number. There are generally few complaints concerning the OSPs' ability to bill from these BOC-issued calling cards.

Customer complaints usually involve the use of a calling card issued by AT&T. As a result of the divestiture, AT&T is permitted to issue calling cards using numbers that come from the same database that the BOCs use to issue their own calling cards. When a non-AT&T OSP is presented with a calling card number obtained from this "shared" database, the carrier does not know whether the card was issued by AT&T or by a BOC. The operator services provider only knows that it can validate and bill this number by checking with the database that is shared by the BOCs and AT&T. The OSP then can carry the call and bill the customer at its own rate, which may be much higher than AT&T's rates. The customer, however, is often surprised to find that another carrier was able to provide the service even though the customer used an AT&T calling card.

This legislation does not attempt to address this problem directly. The question of who can bill and validate numbers contained in this shared database is a question that is being considered by the FCC and by the courts. Instead, the legislation protects the consumer by providing a means by which callers can reach their desired carrier by dialing a carrier-specific access code.

This provision addresses a variation of the billing card problem that will become more important in the future. Increasingly, carriers are issuing "proprietary" calling cards that identify the issuing carrier by the numbers on the card as well as by the name on the card. The billing number does not come from the database shared by the BOCs and AT&T but is generated by the OSP itself. The OSPs' intention in issuing these cards is to prevent other carriers from being able to provide service or bill using these "proprietary" numbers. It appears, however, that some carriers have found ways to validate and bill calls using these numbers, despite the issuing carrier's best intentions.

S. 1660 as reported restricts a carrier's ability to bill calls using another carrier's proprietary card. The bill as reported bars OSPs fom carrying calls when a caller uses a calling card and the indentity of the issuing carrier can be recognized by the billing card number instead of the card itself. S. 1660 as introduced would have restricted the ability of a carrier to carry a call when the caller uses a calling card issued by another carrier. This would have restricted the ability of an OSP to bill a call to a card issued by AT&T even though AT&T simply pulled the number from the same shared database used by the BOCs.

The bill as reported contains the same exceptions to this prohibition as those contained in S. 1660 as introduced. Specifically, a carrier only can bill from another carrier's "proprietary" card if the rate charged is no greater than that of the carrier issuing the

number,[16] the caller requests a special service, or the caller specifically and clearly consents to a different charge.

Subsection (a)(2) imposes the following requirements on each OSP for the first three years after 30 days following enactment of the bill: (A) the OSP must identify itself a second time to the consumer before the consumer incurs any charge for the call; and (B) it must state "our rates are available on request" at the beginning of the call. Again, these requirements are necessary to inform consumers that they have the rights to know the identify of the carrier handling the call and to question the rates for that call. The numerous consumer complaints demonstrate that many consumers do not yet understand the tremendous changes that have occurred in the communications market over the last few years. Many consumers do not realize, for instance, that AT&T has been split into eight independent companies. Many consumers are also unaware that there are over one hundred carriers competing for operator services around the country. this subsection is intended to assist the consumer in learning about these changes at a minimal cost to the industry. These additional requirements will expire three years and 30 days after the enactment of this bill.

Subsection (b)(1)(A) requires each aggregator to post on or near all its telephones the name, address, and telephone number of the presubscribed OSP, a disclosure that consumers have the right to use the OSP of their choice, and the name, address, and telephone number of the consumer affairs division of the FCC. This information must be placed so that it is plainly visible to a caller. Pay telephone onwners are expected to affix a sticker, plastic or laminated card, or some other similar card, directly on the telephone. Hotels, motels, and hospitals are expected to set up "tent cards" that rest on or near the telephone in each room.

This requirement is necessary to ensure that consumers are informed of the identity of the carrier serving that telephone before they place a call. The posting requirement also will give the consumer information on how to lodge a complaint if the service provided is inadequate.

Subsection (b)(1)(B) requires each aggregator to ensure that each of its telephones allows customers to reach their desired OSP through the use of the "800" and "950" access code numbers. This is a fundamental provision of this bill. In order for true competition to develop in this market, consumers must have the information and ability to choose their desired carriers and therefore must be permitted to reach those carriers by dialing the access code associated with that carrier. There have been substantial allegations from consumers that these access codes have been "blocked" by the aggregators to increase the amount of traffic carried by the presubscribed OSP (and thus the amount of compensation paid to the aggregator). There is no technological reason why these access codes cannot be made available to the customer. Indeed, the aggregators

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[16] It generally will be difficult for one carrier to be able to know the rates charged by another carrier unless the two carriers have a billing arrangement that permits one carrier to bill using another carrier's proprietary card number. The bill as reported would permit these arrangements because, even through the consumer might be unaware that the carrier providing the service is different from the carrier issuing the card number, the consumer would not face charges that are any different from the consumer's expectation.

have not objected to this provision of the legislation. As with other provisions in this bill, this provision only applies to telephones made available by aggregators to the general public or to transient users.

This provision also prohibits the aggregator from charging the consumer more for a call which uses one of these access codes than for a "0+" call. This provision is intended to ensure that consumers are not discouraged from choosing their desired OSPs through access codes. This prohibition on charging for the use of access codes also applies to the use of the "10XXX" code and other equal access codes. Even if the FCC, pursuant to subsection (g), does not require universal unblocking of the equal access codes, many aggregator locations will allow such access, especially after one year from the enactment of the bill when all new equipment must recognize the equal access codes pursuant to subsection (e). Aggregators should not discourage the caller from using that access method by charging more for the use of those codes than for dialing "0+".

Subsection (b)(2) provides that the provisions of subsection (b)(1)(A) do not apply if the State in which the telephone is located has adopted other laws or regulations establishing similar posting requirements. Many States have adopted posting requirements in recognition of the concerns raised by consumers. It would be duplicative to enforce the posting requirements of this bill in addition to the posting requirements enforced by the States. In general, the more information posted on each telephone, the less willing or able the consumer may be to read the information. In some cases, State legislators or regulatory bodies may be more aware of the information needs of their consumers than Federal legislators and may have particular concerns that need to be addressed in these stickers or tent cards. The Committee's purpose is solely to ensure that there is adequate disclosure to consumers of the information specified in subsection (b)(1)(A). So long as such disclosure is occurring, there is no need for layering duplicative regulatory requirements on aggregators.

Subsection (c)(1) requires the FCC to prescribe regulations to establish minimum standards for the routing and handling of emergency telephone calls. This provision is identical to the provision contained in S. 1660 as introduced. Emergency telephone services, such as "911" services, are typically provided by the local telephone company under State regulation. The purpose of this provison is simply to ensure that the telephones supplied by aggregators allow the consumer to obtain access to all the emergency services provided according to State regulation or practices. This provision is not intended to preempt State authority over the routing and handling of emergency calls.

Subsection (c)(2) requires the FCC to establish a policy for requiring OSP's to make available to the public information about changes in the operator services marketplace. This provision is also identical to the provision contained in S. 1660 as introduced. This requirement is necessary to ensure that consumers do not become victims of future changes in the operator services market. The telecommunications industry has been extremely volatile over the past decade, and there is a danger that future changes in the operator services market once again may cause confusion to the detriment

of the public. As mentioned earlier, many citizens remain confused about the divestiture of AT&T and the growth of competition in the long distance market. The govenment and the carriers should assume a substantial responsibility for ensuring that consumers become educated about these changes. The Committee expects the FCC to develop strong measures to ensure that the consumer problems that have occurred with operator services over the past few years do not recur.

Subsection (d) requires the FCC to consider the need to prescribe compensation for independent pay phone owners for calls made using a carrier-specific access code.[17] The FCC must make this determination within 9 months after enactment of the bill. This provision is almost identical to the provision contained in S. 1660 as introduced, except that S. 1660 as introduced would have required the FCC to consider the question of compensation in conjunction with the rulemaking proceeding to enforce the other provisions of the bill. This rulemaking proceeding would have been completed within 120 days of enactment, instead of the 9 months set forth in the bill as reported.

As opposed to hotels, motels, hospitals, and telephone company-owned pay telephones, the owners of independent pay telephones are limited to two sources of income—coins deposited by callers using the phone and compensation from the presubscribed OSP. Private pay phone owners receive no compensation for calls made using a carrier-specific access code. As private pay phone owners unblock these access codes, and as consumers become more educated about the use of these access codes, the independent pay telephone owners face the threat of a significant loss of revenue. For instance, a caller using an access code may remain on the line for several minutes, while several customers who might have made calls using the pay phone owners' presubscribed carrier find another telephone. The independent pay telephone owners argue that they are providing a service (in the form of a "gateway" to these carriers' networks) and thus deserve to be compensated for calls placed using these access codes. Others argue that private pay phone owners should be treated no differently from pay telephones owned by telephone companies, or from other aggregators.

The Committee has studied this issue in great detail but believes that the question of whether private pay phone compensation should be mandated needs further analysis. This issue raises a number of related and complicated issues, many of which are pending before the FCC. The Committee believes that the issue of compensation is best left to the FCC to decide in conjunction with these other pending matters. The bill as reported thus requires the FCC to make a final decision within nine months after enactment of this bill about whether these independent pay telephone owners should be compensated for these calls. Should the FCC decide that such compensation is warranted, the Committee expects that the FCC will determine who pays the compensation, what steps should be taken to implement a workable compensation scheme, what the

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[17] Independent, private, or competitive pay telephones refer to those pay phones not owned or provided by the telephone companies. The FCC first authorized non-telephone company individuals to provide pay telephones in competition with the telephone companies in 1984.

payment mechanisms shall be, reasonable levels of compensation, and other related matters on an expedited basis.

The bill bars the FCC from deciding that the compensation must be paid by consumers who make the calls using these access codes. In other words, the FCC may not require consumers to deposit coins in the pay telephone box for these calls. Prescribing such compensation from consumers would create several problems—(1) it would be inconvenient for consumers and would add to the burden they already face when making operator-assisted calls; (2) it would discourage consumers from using the carrier of their choice; (3) it would intrude on State regulation of the rates set for use of these pay telephones; and (4) it would place competitive pay phone owners at a competitive disadvantage in relation to carrier-owned pay phones, for which such compensation is not required.

Subsection (e) requires that equipment manufactured in or imported into the United States more than a year after the date of enactment and installed by an aggregator be able to recognize the "10XXX" access code or any other equal access code. In the long run, the equal access codes are likely to provide a higher quality of service to the customer than either "800" access or "950" access. It appears to be in the long-term interests of the public, including the manufacturing industry that new equipment be programmed to recognize the "10XXX" access code. This requirement will help to speed the availability of the "10XXX" access code to all consumers.

This requirement is not intended to prejudge the FCC's decision in accordance with subsection (g) of this section. The question of whether aggregators should be required to upgrade their existing equipment to recognize the "10XXX" access code is different from whether new equipment should be upgraded initally. The cost of designing equipment to recognize the "10XXX" access code is much less than attempting to upgrade existing equipment through software changes or adjunct equipment. The equipment manufacturers should find that their equipment is more competitive when it recognizes all acess codes, including the equal access codes. The FCC should develop and implement policies to ensure that equipment is designed to recognize future access codes approved by the FCC within a reasonable amount of time.

S. 1660 as introduced would have required equipment manufactured or imported more than 18 months after enactment to recognize all access codes. The bill as reported shortens this period to 12 months. H.R. 971, which passed the House of Representatives last September, also set this time frame at 18 months. The passage of H.R. 971 gave the manufacturers notice that future equipment likely would be required to recognize all access codes. The manufacturers will have had approximately one year between the passage of the House bill and the final enactment of this bill to prepare for this requirement. Thus, there does not appear to be any substantial reason not to shorten this time from 18 months to 12 months.

Subsection (f) requires the FCC to take such actions as are necessary to protect aggregators from undue risk of fraud. Representatives of the owners of private pay telephones and the hotel industry testified that unblocking the "10XXX" access code would subject them to substantial amounts of illegal fraud. For instance, cus-

tomers from aggregator locations might be able to make "10XXX+1" calls as well as "10XXX+0" calls if the "10XXX" code is unblocked. If a customer dials "10XXX+1", the aggregator will receive a bill for the call long after the customer has departed the premises.

There appear to be several ways in which aggregators can become subject to fraud, some of which may be related to the "10XXX" access code. The bill instructs the FCC to investigate all such fraud problems and to adopt measures to ensure that aggregators are adequately protected against fraud, especially if the FCC orders the unblocking of the "10XXX" code by all aggregators pursuant to subsection (g). In conducting the proceeding under subsection (g), the FCC should undertake a comprehensive examination of all the problems with fraud and all the potential solutions to those problems, including those involving the local telephone companies and interstate interexchange carriers. The FCC for instance, should explore whether and to what degree fraud prevention at the network level would be an effective solution. In conducting such an examination, the FCC may wish to seek the advice of the Exchange Carriers Standards Association.

Subsection (g) requires the FCC to require either that all telephone made available to the public by aggregators permit the caller to use the equal access codes ("10XXX"), or that all OSPs provide their customers with a "950" or "800" number for use in making operator services calls nationwide, or both.

This provision significantly alters S. 1660 as introduced. S. 1660 as introduced required all aggregators to unblock all access codes, including the "10XXX" and other equal access codes. The FCC would have been permitted to grant waivers of this unblocking requirement for certain equipment if the FCC determined that the benefits of unblocking did not justify the costs. This requirement would have allowed callers from aggregator locations to reach an AT&T operator, for instance, by dialing 10288 (10ATT). The hotel industry believes that unblocking the 10XXX access code would require it to purchase new equipment at a cost of $600 million nationwide. The hotel industry also alleges that unblocking this code would subject the industry to thousands of dollars of debt from fraudulent phone calls. AT&T, which supports the 10XXX unblocking requirement, believes the equipment cost would be closer to $60 million and asserts that the technology is available to protect against fraud.

The alternative solution proposed by the hotel industry and other aggregators is to require all carriers to set up an "800" or "950" number for operator services calls. They point out that all carriers except AT&T currently have such alternate access (either a "950" or "800" number) and that almost all of the consumer complaints come from AT&T customers who cannot reach AT&T because it has no "950" or "800" number. The hotel industry argues that callers are more familiar with "800" and "950" numbers than "10XXX" numbers and notes that AT&T has admitted that it could set up an "800" number in six months. AT&T objects that an "800" number would cost AT&T about $550 million and would provide a connection inferior to one made using the "10XXX" access code.

In the course of negotiations between AT&T and the hotel industry, AT&T offered to pay for most aggregators' costs of unblocking the "10XXX" access code. AT&T also proposed to cover any additional fraud that occurred from the use of this code over the AT&T network. The hotel industry rejected this proposal. It doubted that AT&T would pay all its costs of upgrading the hotels' private branch exchanges (PBXs) and would assume liability for the equipment that it installed. While the hotel industry expressed appreciation for AT&T's offer to cover the fraud that occurs over its network, the hotel industry claimed that aggregators still would be liable for fraudulent calls placed over other companies' networks, such as MCI and Sprint. MCI and competitive equipment vendors also opposed AT&T's offer as an unlawful and anticompetitive giveaway of equipment and services.

This debate involves a host of technical issues that the FCC is best suited to resolve. Both AT&T and the hotel industry have provided detailed information concerning the operations of the telephone network and the ability of certain equipment to protect against fraud. Engineers from both sides disagree vehemently over whether the "10XXX" code can be implemented without subjecting aggregators to undue amounts of uncollected bills.[18] There are also substantial questions regarding the costs of implementing this form of access.[19] The FCC has a staff of engineers and economists that is better qualified to assess these questions than the Committee. What is most important is that consumers of operator services be permitted to reach their carriers of choice quickly whether through an "800" or "950" number or through the "10XXX" access code. The bill thus directs the FCC to require one or both access methods within nine months of enactment of the bill.[20] As mentioned previ-

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[18] AT&T provided evidence of several different technologies that it believed would allow aggregators to recognize "10XXX+0+" calls while blocking "10XXX+1+" calls. There are several questions concerning each of these technologies, however. For instance, AT&T claims that aggregators could purchase "toll restrictions" to be installed on the aggregators' access lines. The hotels claims that these toll restrictors have not been fully tested. AT&T, which is a distributor of "toll restrictors", admits that they only recently have come on the market. AT&T also suggests that aggregators could purchase "line screening" functions from the local telephone company, but it appears that such line screening is not currently available from all telephone companies. AT&T also suggested that the software of some aggregator private branch exchanges (PBXs) simply would need to be reprogrammed to recognize the "10XXX" access code. On the other hand, AT&T admits that the "Dimension" PBX that it manufactures and sells to aggregators cannot be so reprogrammed.

[19] For instance, the hotels believe that, even using toll restrictors, they will have to subscribe to additional access lines from the telephone company. These new lines will require the installation of additional ports, boards, and shelves to their existing PBXs. They claim that AT&T has not agreed to pick up their costs of making these changes to their PBXs.

[20] The FCC may be persuaded that both solutions should be implemented because of the differences between the two access codes. It appears, for instance, that "800" access could provide more immediate relief to the consumer than requiring the unblocking of the "10XXX" access code. All carriers except for AT&T already provide "950" or "800" access. AT&T has admitted that, if required to do so, it could establish a nationwide "800" number within six months. The "10XXX" access code cannot be recognized in those areas where equal access is not available from the local telephone company (which includes about 7 percent of the Nation's subscribers). Equal access is not expected to be available in some locations for several years. Further, it is likely to take several years for 45,000 hotels and over 10,000 hospitals, universities, pay phone owners, and other aggregators to implement the "10XXX" access code, even if required by the FCC to do so.

On the other hand, "10XXX" access may provide a superior method of access in the long run. The "10XXX" access code requires the dialing of fewer digits (5 in the case of "10XXX" versus 11 in the case of "1-800-NNX-XXXX"). There are likely to be three or four fewer seconds of "post-dial delay" if the "10XXX" code is used. Finally, the "10XXX" code may provide greater opportunities for special and automated services than "800" access. The FCC has proposed rules that would establish both requirements, and this bill is not intended to require the FCC to choose only one or the other if it finds that both methods of access will benefit the consumer.

ously, in making this decision, the FCC should consider the question of whether implementation of the "10XXX" access code or other equal access codes would subject aggregators to undue fraud and whether adequate solutions to the problems of fraud can be developed and implemented.

Section 6.—Determination of rate compliance

Subsection (a) requires each OSP to file informational tariffs with the FCC. The FCC may waive this requirement after 3 years following enactment if it determines that consumers are being sufficiently protected from unfair and deceptive practices related to operator services and that consumers have the opportunity to make informed choices regarding such calls. While the FCC is charged with the responsibility for determining how detailed these informational tariffs must be, the Committee does not expect that these informational tariffs would require the same amount of supporting documentation as required of most dominant carriers. For instance, the Committee does not expect that the OSPs will be required to comply with all the requirements of Part 61 of the FCC's rules.

Though the provision states that these informational tariffs most contain information on the commissions, surcharges, or other fees collected from consumers, the OSPs need not submit this information for each location but may submit the information on an aggregated basis. To require the public filing of individual commissions, surcharges, and other fees for each location could result in the OSPs submitting commercially sensitive or proprietary information. Further, the Committeee does not expect that the FCC will require the OSPs to file these tariffs before they become effective but within a reasonable time thereafter. The Committee does not intend with this provision to change the filing requirements of any of the dominant carriers.

The bill as reported makes two changes to the informational tariff filing requirements set forth in S. 1660 as introduced. The first modification is that the FCC is given the authority to waive the informational tariff filing requirement after three years if it makes the requisite findings that consumers are benefiting from competition in the operator services market. This tariff filing requirement is intended to allow members of the public and the FCC to review and, if necessary, investigate these carriers' rates. If the other provisions in this bill have a positive effect in promoting competitive rates and services, however, the need for these tariffs filings diminishes.

The second change is that the bill as reported omits the subsection requiring the FCC to review the rates of these OSPs and to require OSPs to demonstrate that their rates are just and reasonable and reflect their costs plus a reasonable profit. At the hearing on this legislation, a representative of the FCC testified that examining the costs of each provider of operator services could impose a tremendous burden on the FCC. He further noted that, since these carriers' costs of providing service may be greater than those of AT&T and that their rates may be cost-justified, such an examination may not result in lower rates to the consumer.

The Committee recognizes the potential burden that could be imposed on the FCC if it has to examine each of these carriers' rates and costs. Thus, the bill as reported only will authorize explicit regulation of these carriers' rates if the other measures contained in this bill to promote competition do not provide the expected consumer benefit. If, despite these measurers, consumers do not benefit from competition in the operator services market, subsection (c) recognizes the FCC's authority to establish ceilings on the rates charged by these carriers.

Subsection (b)(1) orders the FCC to open a proceeding within 30 days after enactment to determine whether consumers are being adequately protected from the activities of OSPs and whether they can make informed choices concerning their operator services calls. As part of this proceeding, the FCC shall: (A) monitor operator services rates; (B) determine whether the new entrants in the operator services marketplace have provided improved services to the consumer; (C) report on operator services rates, complaints, and service offerings; (D) consider the effect that commissions and other costs have had on operator services rates; and (E) monitor compliance with the provisions of section 5, including the periodic placement of telephone calls from aggregator locations.

The Committee made further minor amendments to S. 1660 as introduced. S. 1660 as introduced directs the FCC to "assess, both in the aggregate and by individual providers", the costs of providing operator services. In recognition that this would impose a significant burden on the FCC to examine each carrier's costs of service, the bill as reported simply directs the FCC to "report on, in the aggregate, operator service rates, incidence of service complaints, and service offerings". The FCC's responsibility to examine the carriers' costs is shifted to subsection (b)(1)(D), where the FCC is directed to consider the effect of the carriers' costs on their overall rates.

In making the determination under subsection (b)(1)(B) as to whether offerings of new operator service providers are improvements over offerings which were previously available, the FCC should include a consideration of the competitive responses to the services of new OSPs by the traditional carriers.

Subsection (b)(2) sets forth the reporting requirements of the FCC. The FCC is directed to issue an interim report to Congress on its activities and progress within 5 months after initiating the proceeding, to report to Congress on its interim findings within 11 months, and to issue a final report to Congress on its findings and conclusions within 23 months. This schedule changes the provisions of S. 1660 as introduced, which directed the FCC to submit quarterly interim reports. The reporting schedule included in the bill as reported should provide the necessary information to the Congress without imposing an undue burden on the FCC.

Subsection (c) recognizes the FCC's authority to establish ceilings on the rates charged by OSPs based upon the rates charged by the largest OSP if the FCC finds in its final report to Congress that consumers are not benefiting from a competitive market for operator services. This provision does not require the FCC to prescribe ceilings for the rates of these carriers. Further, if the FCC does impose such ceilings, it is not restricted to setting ceilings that are

equal to the rates of the largest OSP. These ceilings need only be "based upon" the rates of the largest OSP; the ceiling, for instance, could be set at 10 percent or 50 percent above or below the rates of the largest OSP, depending upon the FCC's determination of what rates would be just and reasonable. The FCC also may set ceilings that differ from carrier to carrier.

It is necessary to recognize the FCC's authority to impose some sort of ceiling, however, to give the carriers an additional incentive to bring their rates down to a reasonable level. Again, if the FCC finds that consumers are not benefiting from competition in this market, because of high rates, poor service quality, or other concerns, the FCC may set such rate ceilings. The Committee expects the FCC to act responsibly in this regard to ensure that the interests of the consumer are protected.

Section 7.—Penalties; Forfeitures

Section 7 makes clear that the penalty provisions of title V of the Communications Act of 1934 apply to violations of this bill, including criminal penalties and forfeitures of up to $100,000 for willful or repeated failure to comply with this legislation or the FCC's rules. This section makes no change in the existing penalties under the Communications Act of 1934. This provision is included in the bill as reported solely to remind carriers and aggregators of the consequences of failing to abide by the provisions of this bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

ADDITIONAL VIEWS OF MESSRS. BREAUX, KERRY, BURNS, AND LOTT

As original sponsor (Senator Breaux) and co-sponsors of S. 1660 (Senators Kerry, and Burns), and as a participants in S. 1660 Committee Draft negotiations (Senator Lott), we fully support S. 1660 as passed by the Committee. A tremendous amount of effort went into producing a bill that is expected to solve serious consumer problems in a very technical and complex environment.

Largely, the legislation provides clear regulatory guidance to the FCC. Effective regulations are needed to address problems accompanying the emergence of numerous OSPs vying to serve telephone users at thousands of transient-guest and payphone locations around the country.

The problem of "blocking" is among the most serious of those facing consumers. This bill establishes a consumer's right to freely select their choice of long-distance carrier from transient user telephones. It is the consumer's power of free exercise of choice that will assure the development of beneficial competition in the OSP industry.

Central to any legislative/regulatory formula for a fair resolution of the "blocking" issue is the matter of compensation for independent or private public payphone owners. Under the current system, an independent payphone provider is compensated for calls routed to an OSP under a presubscription contract to provide long-distance services. This bill's unblocking provisions will encourage the consumer to freely choose any long-distance (interexchange) carrier.

The bill anticipates that consumers will often use independent payphones to select non-subscribed interexchange carriers via access codes, such as 1-0-XXX, 950-XXX, or an 800 number. As matters now stand, independent payphone owners will ordinarily receive no compensation for the traffic forwarded to non-affiliated interexchange carriers. Unless, of course, the payphone provider assesses an unpalatable charge directly on the end user for what are traditionally free calls.

At the same time, other telephone call handlers earn revenue on routed calls. Interexchange carriers such as MCI, Sprint, and AT&T, earn revenues for all calls carried. Local exchange carriers, the Bell operating companies, GTE, etc., earn revenues from access charges assessed on these calls. Also, to the extent that local exchange carriers include their investments in payphones in their rate bases, they are ensured of returns on all calls. Telephone call handlers in transient facilities such as hotels, motels, and hospitals are able to assess call charges on guests' bills.

In contrast, the independent payphone owner who invests in payphone equipment, and pays for installation and maintenance as well as on-going central office connection and line charges will re-

ceive no compensation for transferring consumer calls, as is required by this bill, to their choice of long-distance carriers. The independent payphone owner may even lose revenue-generating calls as their payphones are made unavailable by non-compensating callers.

Negotiators strived for a balanced proposal that would maximize possibilities for achieving a principal objective: an environment wherein consumers would have access to their carriers of choice. To assure such an environment the bill imposes severe penalties for "blocking," whether in transient facilities or at independent payphones. At the same time it demands the removal of technological and other disincentives to unblocking, including fraud protection considerations, and the denial of commissions, which will encourage all PBX equipment owners in transient facilities to allow consumers their choice of long-distance carrier.

But the bill voted out of Committee broke the circle of carefully crafted incentives deemed necessary to reaching the unblocking objective. Up to the day prior to mark-up, the draft of the bill supported by Senators who participated in negotiating its terms included a mandatory requirement that the FCC develop a compensation system for independent payphone operations. This mandatory language became permissive (the bill approved by the Committee, directs the FCC to "consider whether compensation should be provided") as the Committee chose to allow the Commission to examine the compensation question in light of their resolution of complex forms-of-access-codes issues.

We support compensation for independent payphone operations. Independent payphone owners alone would be subjected to a legal requirement that they tie up their equipment with free calls. They argue with justification that fair play requires an order to the FCC to institute a system which will assure compensation for such calls.

Our expectations are that the unblocking objective should be achieved in the earliest possible time, and a resolution of the compensation question is a sine qua non for achieving that end. If consumer problems in the OSP industry are not resolved in a reasonable time, these issues will be re-visited.

JOHN B. BREAUX.
JOHN F. KERRY.
CONRAD BURNS.
TRENT LOTT.

ADDITIONAL VIEWS OF MESSRS. GORTON AND BURNS

We welcome the Committee's consideration and approval of S. 1660, the Telephone Operator Consumer Services Improvement Act of 1990. We are writing separately because of our desire to underscore to the Federal Communications Commission the need to carefully review current billing, collection, and validation arrangements in this industry.

In the discussions surrounding S. 1660, we became aware of wide disparities in the costs and availability of certain services between AT&T and other operator service providers. Many local exchange carriers (LECs) provide billing and collection services and access to validation data to AT&T but not to any other OSPs. Further, among the LECs that provide these essential services to the OSPs, there are significant price differences in the charges for those services. The substantial gap in what AT&T frequently pays to the LEC versus any other OSP for billing, collection, and validation services and the unavailability of those services at any price to AT&T's competitors suggest that these differences may be acting as a barrier to fuller development of operator services competition.

Competitive OSP's contend that billing and collection rates that they pay range from a low of about 25 cents per bill and 4 cents per call to a high of around 55 cents per bill and 15 cents per call. Moreover, many BOCs appear to offer volume discounts to the few carriers—possibly only AT&T—who could qualify and which result in a lower per call price for billing and collection services. Such a result clearly would be untenable under the Commission's access charges scheme, in which all carriers pay charges based on uniform, undiscounted rates for local exchange access.

OSPs are wholly dependent on the LECs for validation of calling cards and billed telephone numbers (either collect or third party billed) and for the provision of billing and collection services for those calls. The inability to obtain such services from the LECs has caused many problems for the industry. Today, AT&T is the only carrier capable of accepting, validating, and collecting all billing methods. This situation poses unfair constraints on competitive carriers. We urge the FCC to consider ways to eliminate this problem.

The "bottleneck" nature of billing, collection, and validation services does present the opportunity for discriminatory treatment of various competitors. Equally important is the effect that pricing differences for these services appears to be having on the ultimate rates charged to the consumer. If competition in the operator services market is to flourish on a price basis, the Commission will also need to examine the rates charged for billing, collection, and validation to ensure that those essential services are provided to all OSPs on a nondiscriminatory basis.

It is not our intent to allow barriers to be erected that may block development of competition in this marketplace. Accordingly, we

strongly encourage the FCC to address expeditiously the availability and cost of billing, collection, and validation in the context of the rulemaking required under section 4 of the bill. It is our hope that through the Commission's prompt resolution of these issues no single carrier will enjoy any competitive advantage arising from discriminatory or preferential treatment. This can only lead to a more fully competitive industry and lower rates for consumers of these services.

SLADE GORTON.
CONRAD BURNS.

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